

NO. 48540-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Appellant

v.

WILLIAM R PIPPIN, Respondent

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.15-1-02147-8

REPLY BRIEF OF APPELLANT

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REPLY BRIEF OF APPELLANT

The State hereby submits this Reply Brief to Respondent's Corrected Response Brief. The State also relies on all arguments previously made in its opening brief.

REPLY ARGUMENT

A. THE INVITED ERROR DOCTRINE DOES NOT PREVENT REVIEW

In his response, Pippin argues the State invited the error of the trial court's ruling by preparing proposed findings of fact and conclusions of law. This argument is without merit. It was clear from the beginning the State opposed defense's motion to suppress and asked the Court to rule to the contrary. Furthermore, the State's act of preparing written findings that comported with the court's oral ruling does not remove the State's ability to appeal that ruling. Our Supreme Court has directly addressed this issue. In *Hughes v. Boundary Gold Placers*, 193 Wn. 564, 76 P.2d 611 (1938) our Supreme Court found it is decidedly not invited error "for an unsuccessful litigant to present findings in accord with a previously announced decision of the court." *Hughes*, 193 Wn at 613. The Court found that the proposed findings merely "carried the gist of the decision of the trial court...." *Id.* at 613-14. That is exactly as occurred here. The State

simply acted as the trial court's law clerk, preparing a word document with findings and conclusions that the trial court had previously announced. The State was no more than a scribe. Its prior objections and arguments against the court making such findings were properly preserved. Pippin's argument that the State invited this error fails.

B. OFFICER SAFETY CONCERNS JUSTIFIED THE SEARCH

The issue before this Court is not one of discrimination and equal protection of poor versus rich as Pippin would have this Court believe. The issue revolves around officer safety and the ability of officers, who have witnessed the commission of a misdemeanor in their presence, to order a suspect to comply with reasonable requests. The officers below had justifiable reasons to contact Pippin. He was violating the law. Pippin argues the State implies the homeless have no privacy rights and no ability to keep their private affairs private. However, this factual situation does not paint the picture Pippin wants it to. In this case, the police were respectful. Despite observing Pippin committing a misdemeanor in their presence, they did not immediately invade and arrest. They asked him to show himself, to step out from under his tarp structure. They gave him time to do it. They asked him again. He responded to them and gave them the impression he was going to comply. The officers heard rustling. There had been violence and reports of weapons in the area. The officers were

justifiably concerned for their safety, and they had a suspect who was refusing to comply with simple orders to show himself. The officers clearly had the right at that point in time to lift the side of the tarp to gain visibility of what Pippin was doing to ensure he was not arming himself or in some other way preparing to hurt the officers. This situation is no different from a suspect in a vehicle who refuses to exit, and the officers opening the door and physically removing the defendant.

In *State v. Contreras*, 92 Wn.App. 307, 966 P.2d 915 (1998), this Court upheld the search, seizure and arrest of an individual after police appropriately contacted him and he refused to exit a vehicle. In that case, the officers opened the vehicle door and removed the defendant from the vehicle. This search and seizure was affirmed as appropriate for officer safety after the defendant refused to obey officers' commands to exit the vehicle. *Contreras*, 92 Wn.App. at 316-17.

If Pippin had been in a vehicle on a public road and engaged in the exact same conduct he did here, police would have been justified in opening the vehicle door and removing him as in *Contreras, supra*. At that point any contraband found when Pippin stood up would have been properly found under the plain view doctrine. The officer safety standard should be no different for someone underneath a tarp on public property than it is for someone inside a vehicle. The Superior Court's ruling below

places officers in unnecessary danger and does not comport with established case law on the subject of officer safety. The Superior Court's ruling should be reversed.

CONCLUSION

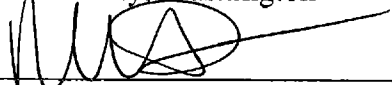
The State respectfully requests this Court reverse the Superior Court's order suppressing evidence.

DATED this 6 day of January, 2017.

Respectfully submitted:

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